(1) No. 89-1998

Supreme Court, U.S.
FILED
JUN 6 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

JOSEPH SLOMNICKI

Petitioner

V.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE COMMONWEALTH COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

JOSEPH SLOMNICKI
Petitioner - Pro Se
5877 Darlington Road
Pittsburgh, PA 15217
(412) 521-3463

QUESTIONS PRESENTED

1. Should the testimony pertaining to the citation from the Allegheny County Health Department have been supressed by virtue of the Petitioner's position that it was the product of an illegal and unreasonable search and seizure, contrary to the Fourth Amendment of the United States Consitution?

2. Can the conset of the tenant vis a vis the Landlord Petitioner be deemed voluntary and intelligent in light of the Petitioner's contention that the third party (tenant's) interests were adverse to the Petitioner's?

3. Can the fruits of an administrative inspection be admissible in a criminal proceeding?

Should the second consecutive fine of $1900.00 be vacated as it constitutes double jeopardy, contrary to the Fifth Amendment of the United States Consitution?

Should the charges against the Petitioner have been dismissed with prejudice in light of the Petitioner's contention that the case against the Petitioner was not scheduled to commence until two years after an appeal was perfected, contrary to Rule 1100 a-2 Rule Pa. Rules of Criminal Procedure?

Should the tenant as opposed to the Landlord Petitioner make or bear the expense of alterations, improvements or repairs ordered by public authorities?

Did the trial Court commit reversible error by failing to advise the Petitioner of his (1) right to file post-trial motions; (2) right to assistance of counsel; (3) time period for filing, and (4) that only grounds contained in the post-trial motions may be raised on appeal.

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I

JURISDICITON

The Commonwealth Court Opinion in this matter was filed on January 10, 1989. The Petitioner filed a timely Petition for Allowance to appeal in the Supreme Court of Pennsylvania, Western District on February 9, 1989. In an order dated July 9, 1989, the Supreme Court of Pennsylvania denied the Petitioner's Application for Allowance to Appeal. The State Supreme Court's denial of Petitioner's Allowance to Appeal is set forth in Appendix B. An Application for Reconsideration was filed on July 28, 1989. The State Supreme Court's denial of Petitioner's Application for Reconsideraiton was signed on March 14, 1990 and is set forth in Appendix C. The Court's jurisdiction is invoked under Title 28 $1257 (a).

II

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments IV and V to the United States Constitution are set forth in Appendix D and E, respectively.

III

STATEMENT OF THE CASE

A. Circumstances of the Criminal Proceeding.

The facts of the instant case may be briefly and accurately summarized as follows:

On or about July 19, 1985 Joseph Slomnicki, Petitioner-Landlord received a notice from the Allegheny County Health Department regarding illegal violations of Article VI of the Allegheny County Health Department Rules and Regulations at a rental dwelling located at 3101 Niagra Street, Pittsburgh, Pennsylvania 15213.

On July 25, 1985 Appellant requested an Administrative Hearing on the alleged violations.

On August 21, 1985 Hearing Officer Stanton Jonas conducted a hearing and by letter dated August 21, 1985 determined that Petitioner had not abated certain violations.

On November 22, 1985, the Honorable Housing Court Magistrate, Joseph James held a hearing to determine if alleged violations had been abated.

The Honorable District Justice Joseph James, Housing Court, 541 Public Safety Building, Pittsburgh, Pennsylvania

determined that certain violations had not been abated. He found the Petitioner guilty and imposed a fine of $1,200.00 plus costs.

On April 30, 1986 notwithstanding the fact that the magistrate had already levied a fine of $1,200.00 plus costs pursuant to the same issue in the same property, the Honorable Joseph James held a subsequent hearing to determine if certain health code violations had been abated. The Honorable Justice Joseph James found the defendant guilty and fined the Petitioner $1,900.00 plus costs.

On May 2, 1986 the Petitioner, Joseph Slomnicki, appealed the conviction and fine to Common Pleas Court of Allegheny County, Pennsylvania.

In an order dated July 7, 1988, approximately 26 months after Petitionert's appeal was perfected, the Honorable Raymond L. Scheib, Common Pleas Court of Allegheny County found the Petitioner guilty and upheld the $1,900.00 fine imposed by the magistrate.

The Petitioner timely appealed the trial Court's decision to Commonwealth Court of Pennsylvania.

In an order and opinion dated January 10, 1989, the Honorable Commmonwealth Court of Pennsylvania affirmed the decision of the trial Court.

The Petitioner filed a timely Petition for Allowance to Appeal with the Supreme Court of Pennsylvania, Western District.

In an order dated July 19, 1989 the Honorable Supreme Court of Pennsylvania, Western District denied the Peitioner's Petition for Allowance to Appeal.

The Petitioner timely filed an Application for Reconsideration before the Supreme Court of Pennsylvania, Western District.

In an order dated March 14, 1990, the Honorable Supreme Court of Pennsylvania, Western District denied the Petitioner's Application for Reconsideration.

IV

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for seven reasons.

1.

The testimony pertaining to the citation should have been suppressed by virtue of the Petitioner's position that it was the product of an illegal and unreasonable search and seizure contrary to the Fourth Amendment of the United States Constitution.

In Camara v. Municipal Court, 387 US 523 at 534, 1967 the Honorable Supreme Court of the United States of America stated the following:

> "In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual and that the reasons put forth in Frank v. Maryland and in other cases for upholding these warrantless searches are insufficient to jsutify so substantial a weakening of the Fourth Amendment's protections."

In See v. City of Seattle, 387 US 541, at 543 1967 the Supreme Court stated the following:

"The businessman, like the occupant of a residence has a constitutional right to go about his business free from unreasonable official entries upon his prive commercial property. The business man, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant."

The See Court went on to state at 546:

"We hold only that the basic component of a reasonable search under the Fourth Amendment - that it not be enforced without a suitable warrant procedure - that it not be enforced without a suitable warrant procedure - is applicable in the this context, as in others, to business as well as to residential premises."

In the case of People v. Rosenthal, 229 N.Y.S. 2d

960 at 961, 1969 the Court stated the following:

"Second, it purports to give standing to anyone against whom seized evidence may be used. Presumably, this includes absentee landlords."

The Rosenthal Court goes on to state the following at 964, 965:

"Surely, the tenant whether she allowed the inspector into the apartment voluntarily or was duped, cannot give a binding consent to a search of property personal to her landlord.

"Maintenance of safety and health hazards is not condoned by the Court. However, it is the duty of the judiciary although sometimes unpleasant to dispense justice mindful of the rights of the individual as well as the community. If the former are eroded the latter will not survive.

Until the Legislature speaks, warrants will be issued pursuant to the authority of the See and Camara cases, supra."

2.

The Petitioner contends that the consent of the tenant to search or

inspect the Landlord-Petitioner's property cannot lie in light of the Petitioner's property cannot lie in light of the Petitioner's position that the third party's (tenant) interests were adverse to the Petitioner's.

In the case of Kelly v. State, 197 SW 2nd 545, 1946 the Honorable Court stated the following:

> "The Constitution of this State protects citizens of this State against unreasonable searches and seizures and it has been held consistently that officers may not search premises without having a proper search warrant, and that if such search is made in definance of the rights of the owner of the premises, any evidence obtained through such unlawful search is inadmissible against the owner in any prosecution.
>
> The question here arises as to whether or not the wife of the defendant in circumstances such as these could waive the rights of the plaintiff in error so as to enable the State properly to introduce in evidence the discoveries arising out of the search made with the wife's consent."

The Honorable Court goes on to state at 546:

"In this case, however, the wife was angry at her husband, was exceedingly hostile in her attitude toward him, had called the officers to arrest him and then, when the officers appeared did her utmost to get the plaintiff in error into trouble. In other words, her actions were hostile to her husband and obviously contrary to his interests.

"We are of the opinion that in such circumstances the wife had no right to waive her husband's protection against unreasonable searches and seizures, any more than any other person would have had. Her whole attitude was contrary to his interests, and it could not be said that she was acting in any sense in the family interest with any authority to waive rights which might otherwise properly arise out of the relationship."

In the case of United States ex rel Cabey v. Mazurkiewicz, 431 F. 2nd 839 at 843, the Court stated the following:

"A new and intruding element which has not been isolated heretofore may be said to distinguish a third

class of cases. This element is the consenting party's agreement to the search out of motives of hostility to the other, made with the intent to harm by an antagonistic consent. Where it is possible to identify this element, a serious question would arise whether the right to consent is not spent when it reaches this point of deliberate antagonistic intrusion on the rights of the other who has an equal right to possession or control.

> This would be especially true where a wife intentionally acts against her husband's interest, since she sould not be acting in harmony with the marital relationship from which her joint right of ownership or control is derived, but in antagonism to it."

The Petitioner contends that the above-stated principles of Constitutional Law should apply to the Landlord (Petitioner)-Tenant (third party) relationship.

-3-

The Petitioner contends that the fruits of an administrative inspection are inadmissible in a criminal proceeding.

In Michigan v. Tyler , 436 US 499 at 506, 1978, the Court stated the following:

> "Thus there is no dimunition in a person's reasonable expectation of privacy nor in the protection of the Fourth Amendment simply because the official conducting the search wears the uniform of a firefighter rather than a policeman, or because his purpose is to ascertain the cause of a fire rather than to look for evidence of a crime or because the fire

might have been started deliberately. Searches for administrative purposes, like searches for evidence of crime are encompassed by the Fourth Amendment."

The Tyler Court goes on to state at 508:

"In short, the warrant requirement provide significant protection for fire victims in this context just as it does for property owners faced with routine building inspectors."

The Tyler Court goes on to state at 508:

"But if the authorities are seeking evidence to be used in a criminal prosecution, the usual standard of probable cause will apply."

In the case of United States v. Lawson, 502 F. Supp 158 at 165, 1980 the Court stated the following principle:

"But once the purpose behind the search shifts from administrative compliance to a quest for eveidence to be used in a criminal prosecution, the government may constitutionally enter the premises only upon securing a warrant supported by full probable cause."

The Lawson Court goes on to state at 166 the following:

"The Court holds, however that the evidence seized during the July 9, 1979 must be excluded from any criminal trial the defendants may face."

4.

The Petitioner contends that the charges against him should have been dismissed with prejudice in the light of the Petitioner's contention that the case against the Petitioner was not scheduled to commence before the trial Court until two years after an appeal was perfected.

The Petitioner further contends that Pa. R. Crim. P. Rule 1100a-2 42 Pa. CSA was violated.

The rule states in pertinent part as follows:

"Trial in a court case in which a written complaint is filed against the defendant; where the defendant is incarcerated shall commence no later that 180

days from the date on which the complaint is filed."

In the case of Commonwealth v. Kugas, 435 A. 2nd 1293 at 1294, the Honorable Court stated the following:

"Thus we conclude that summary offenses charged in the same complaint as misdemeanors are part of a court case for purposes of Rule 1100."

5.

The Petitioner contends that the second consecutive fine of $1,900.00 should be vacated as it constitutes double jeopardy contrary to the Fifth Amendment of the United States Constitution.

In Commonwealth v. Doe, 72 D&C 570, the Court held that the principle that in a trial by jury jeopardy attaches when the accused has been subjected to a charge and the Court has begun to hear the evidence, applies to summary proceedings before a magistrate."

The Court goes on to state 573, 574:

"However, it has been held in Pennsylvania that in a trial without a jury, and we can see no reason for equating a trial before a district justice without a jury, or one before a judge of a court of record without a jury, jeopardy attaches when the accused has been subjected to a charge and the Court has begun to hear the evidence."

In Commonwealth v. Johnson, 466 A.2nd 636, 1983 at 640 the Court stated the following:

"The next matter which must be addressed is whether the double jeopardy clause applies to summary traffic offenses. We conclude that it does."

The Court goes on to state at 641:

"Furthermore, although the prescribed penalty for violation of the provisions of the Vehicle Code is typically payment of a fine; 75 Pa. C.C. 6504 (Supp 1982). Therefore, we conclude that the double jeopardy clause does apply to motor vehicle citations."

The Johnson court went on to state the following at 641:

"However, the waiver of a constitutional right must be made knowingly and intelligently; to be a knowing and intelligent waiver, the defendant must have been aware of both the right and the risks of

> forfeiting the same. Johnson v. Zerbst, 304 US 458 (1938); Commonwealth v. Mallon, 270 Pa. Super. 350, 421 A. 2d 234 (198). Waiver of a constitutional right cannot be presumed, from a silent record, and the presumption must always be against waiver of constitutional right. Commonwealth v. Norman, 447 Pa. 217, 285 A. 2d 523."

In the instant case Appellant entered his plea without advice of counsel. In view of this fact because the record fails that Appellant was otherwise advised of his double jeopardy right, we decline in the instant matter to find that Appellant has waived this constitutional right by not raising it prior to trial.

In Borough of West Chester v. LAL. 426 A.2d 603, 1981 at 605, the Court stated the following:

> "The Pennsylvania Rules of Criminal Procedure define "criminal proceedings as including "all actions for the enforcement of the penal laws." Pa. R. Crim. Pro. 3 (g). The penal laws include any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty. Pa. R. Crim. Pro. 3(1). An ordinance is a legislative enactment of a political subdivision. Pa. R. Crim.

Pro. 3(k). These definitions (which were in effect in 1976) remove any doubt as to the nature of the instant proceedings - they are criminal proceedings."

The Court goes on to state at 606:

"Finally, we disagree with the Borough's contention that appellant has waived his double jeopardy claim

> because he did not raise it before the Commonwealth Court. Appellant acted pro se as an appellant before that court, submitting his own brief which simply responded to each of the issues raised in the Borough's brief. While appellant could have filed a motion to quash the Commonwealth Court appeal on double jeopardy grounds, we are unwilling to hold that his failure to do so constitutes a knowing and intelligent waiver of his double jeopardy claim."

In United States v. Broce, 781 F. 2d 792 at 795 the Court stated the following:

> "If the absence of constitutional authority prevents the government from instituting charges in the first instance, a defendant's guilty plea cannot confer what the Constitution prohibits. In light of this fundamental concept, the doctrine of waiver has no significance."

6.

The Petitioner contends that the tenant as opposed to the landlord must make or bear the expense of alterations, improvements or repairs ordered by public authorities.

The lease between the landlord and tenant reads in pertinent part as follows:

> "Lessor shall enforce payment thereof in the same manner as hereinafter provided, to maintain and keep the premises during the term in good repair, including water pipes, their connections and all plumbing fixtures, also the cellar yard free of rubbish and in such condition as the Board of Health may require."

The lease goes on to state:

> "The tenant further agrees to perform, obey and comply with all the ordinances rules, regulations and laws of all public authorities."

In the case of Irish v. Rosenbaum, 348 Pa. 194, at 199, 1948, the Supreme Court of Pennsylvania stated the following:

> "The tenant must bear the expense incident to removing the hazardous condition of the building."

The Court went on to state:

> "The leases determine the law of the case and when properly interpreted, they definitely place the obligation on the tenant, this appellant."

F.

The Petitioner contends that the trial Court committed reversible error by failing to advise him of his (1) right to file post-trial motions; (2) right to assistance of counsel; (3) time period for filing, and (4) that only grounds contained in the post-trial motions may be raised on appeal.

In Commonwealth v. Cox, 465 A.2d 1296 at 1296, the Honorable Superior Court of Pennsylvania stated as follows:

> "Appellant contends that she was not apprised of her right to file post verdict motions. Pa. R. Crim. P. 1123 (a) requires the court to inform the defendant (1) of her right to file post verdict motions and of her right to the assistance of counsel in the filing of such motions and on appeal of any issues raised therein (2) of the time within which she must file such motions and (3) that only the grounds contained in such motions may be raised on appeal. If the record is devoid of a rule 1123 colloquy and the court's only actions were to find the defendant guilty and impose sentence, the defendant cannot be found to have knowingly and intelligently waived her right to file post verdict motions."

VI

CONCLUSION

Wherefore, it is prayed that this Petition for Writ of Certiorari be granted, and a hearing be had in the Supreme Court of the United States.

Respectfully submitted,

Joseph Slomnicki, Pro Se

5877 Darlington Road

Pittsburgh, Pennsylvania 15217

(412) 521-3463

APPENDIX

JOSEPH SLOMNICKI
Appellant

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

v.

COMMONWEALTH OF PENNSYLVANIA
Appellee

No. 1919 C.D. 1988

BEFORE: HONORABLE DAVID W. CRAIG, Judge
HONORABLE MADALINE PALLADINO, Judge
HONORABLE ALEXANDER F. BARBIERI, Senior Judge

SUBMITTED ON BRIEFS: November 30, 1988

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE BARBIERI

FILED: January 10, 1989

Before the Court is the continuing saga of Joseph Slomnicki (Appellant) seeking pro se to evade the efforts of the Allegheny Coutny Health Department (Department) to compel him to clean up his rental property at 3101 Niagra Street in Pittsburgh on pain of summary fine pursuant to Article VI of the Allegheny County Health Department Rules and Regulations (Regulations) dealing with houses and rooming houses.

We first met Appellant in Slomnick v. Allegheny County Health Department (Slomnick I), 114 Pa. Commonwealth Ct. 41, 538 A.2d 122 (1988). The facts of Slomnick I serve as background to the instant case. On July 12, 1985, the Department inspected Appellant's

APPENDIX A

rental property at 3101 Niagra street and found twenty separate violations of the Regulations relating to the general structure of the residence, the condition of the doors and windows, installation of utilities and fixtures, and rodent and pest control. Appellant was given notice to abate these violations and failed to do so. An administrative hearing conducted August 21, 1985 produced no result. On October 23, 1985, the Department filed a summary criminal complaint against Appellant. On November 22, 1985, Appellant was convicted before a magistrate and fined $1,200.00 plus costs. Appellant appealed this conviction to the Allegheny Court of Common Pleas which quashed this appeal by order dated April 10, 1987. In Slomnicki I we held that the trial court erred in quashing this appeal without granting Appellant a hearing and remanded for this purpose.

During the time that this case was on appeal first to trial court and then to this Court, Appellant did nothing to correct the health violations on his property. Subsequent inspections were carried out by the Department on

October 9, 1985, November 22, 1985, January 31, 1986, and April 3, 1986, eahc with the same result: the same health code violations that Appellant had been originally cited for remained unremedied. Consequently, on March 5, 1986, the Department filed a second summary complaint against Appellant charging him with the same violations as the first. On April 30, 1986, the magistrate once again convicted Appellant and this time fined him $1,900.00 plus costs. Appellant appealed to the trial court which by order dated July 7, 1988, affirmed the magistrate's decision. In the meantime, Slomnicki I had been decided by this Court and the trial court on remand affirmed the magistrate's conviction and fine in that case. Appellant's response is to appeal the trial court's order of July 7, 1988, contending that the second conviction and fine constitutes double jeopardy.

We note that Appellant did not raise this issue before the trial court and the conditions for double jeopardy have not been met. Double jeopardy only attaches when multiple prosecutions are brought for the smae criminal episode or act. Section 664(c) of the Regulations specifies that violations on separate days shall be considered separate offenses.

APPENDIX A

Appellant was convicted for violations of the Regulations that occurred on different dates. Appellant is not entitled to a free pass after one conviction to maintain his rental property in violation of the Regulations indefinitely or until it eventually falls apart from neglect.

Appellant next argues that the terms of the lease entered into for the property place the burden of rectifying the violations and maintaining the property on the tenant. We rejected this identical argument in Slomnicki I.

Finally, Appellant contends that the Department's entry and inspection of the rental premises without a search warrant is a violation of his rights under the Fourth Amendment to the United States Constitution and any testimony concerning the results of the inspection must be suppressed. The Department's inspections were carried out with the consent of Appellant's tenant on the premises who was understandably eager to cooperate with the Department's efforts to make the premises habitable. The terms of the lease which Appellant cites in his prior argument place this tenant in care and control of the property and

grant him the authority to consent to a search of the premises.

In conclusion, Appellant argues in his brief that the scales of justice have been tipped heavily in favor of the Department. Appellant is fortunate indeed that the Department did not request attorney fees for frivolous appeal or the weight of justice would have fallen even more heavily on Appellant. The order of the Court of Common Pleas of Allegheny County is affirmed.

/s/ Alexander F. Barbieri

Alexander F. Barbieri, Senior Judge

APPENDIX A

JOSEPH SLOMNICKI

Appellant

IN THE COMMONWEATH COURT

OF PENNSYLVANIA

v.

COMMONWEALTH OF PENNSYLVANIA

Appellee

No. 1918 C.D. 1988

ORDER

NOW, January 10, 1989, the order of the Court of Common Pleas of Allegheny County at No. SA 742-1986, dated July 7, 1988, is hereby affirmed.

/S/ Alexander F. Barbieri

Alexander F. Barbieri, Senior Judge

I hereby certify that a true and correct copy of the within Petition for Allowance to Appeal has been served upon counsel for Appellee on February 10, 1989. Service was conducted by first class mail.

Robert Borogyn

3333 Forbes Avenue

Pittsburgh, Pennsylvania 15213

/s/ Joseph Slomnicki

APPENDIX A

THE SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

Irma T. Gardner
Deputy Prothnotary

801 City-County Building
Pittsburgh, PA 15219
(412) 565-2816

July 21, 1989

Mr. Joseph Slomnicki
5877 Darlington Road
Pittsburgh, Pa. 15217

In Re: Commonwealth v. Joseph Slomnicki
No. 103 W. D. Allocatur Docket 1989

Dear Mr. Slomnicki:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above matter:

"July 19, 1989

PER CURIAM:

Petition denied."

Very truly yours,

/S/ Irma T. Gardner

DEPUTY PROTHONOTARY

ITG: cho

cc: Robert G. Borgoyn, Esq.

Hon. Raymond L. Scheib

APPENDIX B

THE SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

Irma T. Gardner

Deputy Prothonotary

801 City-County Building

Pittsburgh, PA 15219

(412) 565-2816

March 20, 1990

Mr. Joseph Slomnick

5877 Darlington Road

Pittsburgh, Pa. 15217

In Re: Commonwealth v. Joseph Slomnicki

No. 103 W. D. Allocatur Docket 1989

Dear Mr. Slomnicki:

The Court has entered the following order on your Application for Reconsideration in the above matter:

"March 14, 1990

PER CURIAM:

Petition for Reconsideration denied."

Very truly yours,

/S/ Irma T. Gardner

DEPUTY

PROTHONOTARY

ITG: cho

cc: Robert G. Borgoyn, Esquire

Hon. Raymond L. Scheib, S. J.

APPENDIX C

AMENDMENT IV TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX E

USC - TITLE 28 S 1257.a

1257. State courts; certiorari

(a) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the constitution or the treaties or statutes of, or any comission held or authority exercised under, the United States.

APPENDIX F

PENNSYLVANIA RULES OF CRIMINAL PROCEDURE

RULE 1100a (2)

42 PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED

(2) Trial in a court case in which a written complaint is filed against the defendant, where the defendant is incarcerated, shall commence no later than one hundred eighty (180) days from the date on which the complaint is filed.

APPENDIX G

PENNSYL''ANIA RULES OF CRIMINAL PROCEDURE

RULE 1123 (C)

42 PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED

(c) Upon the finding of guilt, the trial judge shall advise the deffendant on the record:

(1) of the right to file post-verdict motions and of the right to the assistance of counsel in the filing of such motions and on appeal of any issues raised therein;

(2) of the time within which he must do so as set forth in paragraph (a); and

(3) that only the grounds contained in such motions may be raised on appeal.

APPENDIX H

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

NO._____

JOSEPH SLOMNICKI

Petitioner

V.

ALLEGHENY COUNTY HEALTH DEPARTMENT

Respondent

I, Joseph Slomnicki, do swear that on this date, May 29, 1990, I have served three copies of the attached Petition For a Writ of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid. The names and addresses of those served are as follows:

Robert Borgoyn, Esquire, Counsel for Respondent

3333 Forbes Avenue

Pittsburgh, Pennsylvania 15213

Joseph Slomnicki

Sworn to and subscribed before me this 29th day of May, 1990

NOTARY PUBLIC

Notarial Seal
Gretchen L. Bohna, Notary Public
Pittsburgh, Allegheny County
My Commission Expires May 9, 1994
Member, Pennsylvania Association of Notaries

Supreme Court, U.S.
FILED
JUN 18 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-1998

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

JOSEPH SLOMNICKI
Petitioner

V.

ALLEGHENY COUNTY HEALTH DEPARTMENT
Respondent

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

BRIEF FOR RESPONDENT

George Janocsko, Esq.
(Counsel of Record)
PA I.D. #26408
Allegheny County Law Department
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Pittsburgh, Pennsylvania 15219
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Robert G. Borgoyn, Jr., Esq.
PA I.D. #24887
Allegheny County Health Department
3333 Forbes Avenue
Pittsburgh, Pennsylvania 15219

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QUESTIONS PRESENTED

1) Whether the inspection procedures used by the Allegheny County Health Department were a reasonable exercise of its police powers? . . . . . p 7

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JURISDICTION

This is an appeal from the Pennsylvania Supreme Court denying both a Petition for Allowance of Appeal, dated July 19, 1989, and a subsequent Petition for Reconsideration, dated March 14, 1990, from the judgment of the State Appellate Court (Commonwealth Court of Pennsylvania).

On January 10, 1989, the Commonwealth Court of Pennsylvania affirmed Petitioner's summary conviction for violations of the Allegheny County Health Department Regulations promulgated under the requirements of the Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304 Sec. et seq., as amended 16 P.S. 12001 et seq.

Respondent respectfully contends that the Supreme Court of the United States does not possess jurisdiction to hear this

appeal. The issues raised by the Petitioner do not involve any grounds repugnant to the Constitution, Treaties, or laws of the United States as required by 28 U.S.C. Sec. 1257(a), as amended by the Supreme Court Case Selections Act of 1988, June 27, P.L. 100-352, Sec. 3, 102 Stat. 662, in order for this Court to have jurisdiction.

To strengthen this argument Respondent would like to bring to the attention of this Honorable Court that the issues raised by the Petitioner do not fall into the array of considerations outlined in Rule 10 of the Supreme Court Rules entitled, Considerations Governing Review on Writ of Certiorari. In addition, several of the issues presented to this Court by Petitioner were never raised in the lower Courts.

STATEMENT OF THE CASE

The facts of this case are somewhat complicated owing to the fact that there have been four (4) separate appeals to Common Pleas Court by Petitioner pertaining to this same residential property and three (3) Commonwealth Court appeals from the Allegheny County Common Pleas Court decisions. The pertinent facts are as follows:

On July 9, 1985, an Allegheny County Health Department official received a complaint pertaining to housing conditions at a property owned by Joseph Slomnicki (Petitioner) at 3101 Niagara Street, Pittsburgh, Pennsylvania. The complaint was made by the tenant who occupied the property in question.

On July 12, 1985, an Allegheny County Health Department inspector appeared at the

premises, identified himself to the adult occupant, and was willfully admitted for the purposes of making a health inspection. At that time a number of conditions were noted that identified twenty (20) separate violations of Allegheny County Health Department Rules and Regulations, Article VI, "Houses and Rooming Houses".

On July 19, 1985, Allegheny County Health Department sent to Petitioner, by regular mail, to his home address a letter and inspection form advising him of the conditions noted on the July 12, 1985, inspection and giving him thirty (30) days in which to correct the noted violation. The orders were never returned by the Post Office as undelivered.

On September 3, 1985, after the thirty (30) day period to correct had expired, a follow-up inspection was conducted by the same Allegheny County Health Department

inspector and all previously identified violations remained the same.

On November 22, 1985, and January 31, 1986, additional inspections by the Allegheny County Health Department inspector were conducted and all conditions remained the same.

All inspections were made in the presence and with the consent of the adult occupant of 3101 Niagara Street who also produced a lease and rent receipts signed by Petitioner for the premises at 3101 Niagara Street.

On March 5, 1986, Allegheny County Health Department filed a summary complaint in front of the City of Pittsburgh Housing Court.

At the conclusion of the City of Pittsburgh Housing Court trial of April 30, 1986, Petitioner was found guilty of the violations charged and sentenced to pay a

fine of nineteen hundred dollars ($1900.00) plus costs.

On May 7, 1986, Petitioner appealed his conviction of April 30, 1986, to the Common Pleas Court of Allegheny County, whereby his conviction was affirmed on July 7, 1988.

Subsequently, Petitioner filed an appeal with the Commonwealth Court of Pennsylvania on September 26, 1988. The Commonwealth Court of Pennsylvania affirmed the Common Pleas Court of Allegheny County by an Order dated January 10, 1989.

Petitioner filed an Allowance of Appeal and a Petition for Reconsideration to the Pennsylvania Supreme Court, both of which were denied on July 19, 1989, and March 14, 1990, respectively.

ARGUMENT

A. AT ALL TIMES THE INSPECTION PROCEDURES USED BY ALLEGHENY COUNTY HEALTH DEPARTMENT IN THIS MATTER WERE A REASONABLE EXERCISE OF ITS POLICE POWERS UNDER LAW AND REGULATION.

As indicated previously, this issue does not fall within the parameters of 28 U.S.C. Sec. 1257(a). Therefore, this Court should not consider it for lack of jurisdiction.

The issues raised by Petitioner as to alleged improper searches by Allegheny County Health Department are severely misplaced. The only premises inspected by Allegheny County Health Department staff in this matter were those leased by Petitioner to others for residential occupancy. The record (T. pp 10-12) is uncontroverted in that the inspections were consentual, even

requested, by the valid occupant of the premises.

Allegheny County Health Department Rules and Regulations, Article VI, "Houses and Rooming Houses", at section 606 specifies:

> "606. Entry and Inspection of Dwellings.
>
> A. Subject to the limitations of the Constitutions of the United States and of the Commonwealth of Pennsylvania, and in order to carry out the purpose and provisions of this code the Director, upon showing proper identification of office, may enter and inspect any dwelling at all reasonable times and in any emergency at any time. The owner, operator or occupant of any dwelling shall give the Director

free access for the purpose of such inspection."

Further, the Local Health Administration Law at Section 12012(c) states:

> "The health director and his authorized subordinates may enter and inspect at reasonable times and in a reasonable manner any places or conditions whatsoever within the jurisdiction of the county department of health for the purpose of enforcing the health laws, rules and regulations of the Commonwealth and the county department of health, and for the purpose of examining for, and abating nuisances detrimental to the public health."

It is well established that property rights are not absolute and that persons

hold their property "subject to valid police regulation, made, and to be made, for the health and comfort of the people..." DePaul v. Kaufman, 441 PA 386, 272 A.2d 500 (1971); Nolan v. Jones, 263 PA 124, 131, 106 A. 235, 237 (1919); Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 114 (1926).

A landlord assumes certain duties in his role. This is especially true where the property rented is for a dwelling unit. Justice Holmes clarified this concept as early as 1921: "housing is a necessity of life. All the elements of a public interest justifying some degree of public control are present." Block v. Hirsch, 256 U.S. 135, 156 (1926).

The cases Petitioner cites in his Brief to this Court, do not directly address the issues as they pertain to the facts of the case at Bar.

In Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967), the Appellant was a lessee of a ground floor apartment building. An inspector from the Division of Housing entered the apartment building for a routine annual inspection. The manager of the apartment building allowed the inspector to enter the premises. It was the manager who indicated that the Appellant was using the ground floor of the leasehold as a personal residence. Such use of a ground floor leasehold was not permitted under City regulations. Hence, the inspector asked Appellant if he could enter Appellant's leasehold. The Appellant denied the inspector's request. Then Appellant demanded to see a search warrant. The inspector did not possess one, but proceeded to cite Appellant for not complying with a

City Regulation giving inspectors the power to conduct warrantless searches.

It is Respondent's belief that without being aware of the above facts, Petitioner's quote from Camara may be severely misplaced. Respondent does not dispute the holding in Camara, i.e., that administrative searches must be consentual if the administrative agency lacks a search warrant. However, Respondent strongly objects to applying Camara to the case in question.

The most distinguishing factor from the case before this Court and Camara is the fact that Petitioner's tenant gave his/her consent to the Allegheny County Health Department inspector to enter the apartment leasehold each and every time the inspector inspected the leasehold. In fact, it was the tenant who made the complaint to Respondent regarding the poor living

conditions of the leasehold. In Camara the Court said:

> "Moreover, most citizens allow inspections of their property without a warrant. Thus, as a practical matter and in light of the Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reasons for securing immediate entry." (Emphasis added)
>
> Camara 387 U.S. 523, 539.

In U.S. v. Matlock, 415 U.S. 164 (1974), defendant was arrested, charged and subsequently convicted of bank robbery from evidence obtained during a search of

defendant's leasehold. The police were given consent to search defendant's leasehold in his absence by defendant's girlfriend, who also shared the leasehold with defendant. In Matlock this Court said:

> "...when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." (Emphasis added) Matlock 415 U.S. 164, 171.

In light of Camara and Matlock, it was not necessary for Respondent to obtain a search warrant in this particular case, nor

was it necessary to obtain Petitioner's consent to enter one of his tenant's leaseholds since the tenant who occupied the leasehold in question requested and subsequently allowed an Allegheny County Health Department inspector to enter the leasehold. It is Respondent's contention that the tenant in the case at Bar possessed "common authority" over the premises, or at the least a "sufficient relationship" to the premises to consent to a warrantless search of Petitioner's property.

Hence, Respondent has not violated the Fourth Amendment of the United States Constitution or any other law as the Petitioner attempts to argue.

B. A VALID RULE AND REGULATION OF THE ALLEGHENY COUNTY HEALTH DEPARTMENT IS ENFORCEABLE AS TO THE LANDLORD OF A

RESIDENTIAL PREMISE REGARDLESS OF THE PRIVATE CONTRACT THAT MIGHT EXIST BETWEEN THE LANDLORD AND THE TENANT.

This issue does not involve any constitutional question, nor does it involve any of the pre-requisites required by 28 U.S.C. Sec. 1257(a) in order to confer jurisdiction to this Court. For these reasons, Respondent respectfully asserts that this Court does not have jurisdiction to hear this issue.

It has been settled by the Commonwealth Court of Pennsylvania that a valid rule and regulation of the Allegheny County Health Department is enforceable as to the landlord of a residential premises regardless of the private contract that might exist between the landlord and the tenant. Slomnicki v. Allegheny County Health Department 538 A.2d 122 (1988).

On January 1, 1957, pursuant to Section

12005 of the Local Health Administration Law, Act 315, August 24, 1951, as amended, P.L. 1304, 16 P.S. 12001, Allegheny County Health Department was created.

At Section 12010 of the Local Health Administration Law, powers and duties of county departments of health are enumerated. At subsection (f) of that section it states that county health departments:

> "shall make and enforce such rules and regulations, subject to the approval of the county commissioners or, in the case of a joint-county department of health the joint-county health commission, and institute such programs not inconsistent with law as may be necessary for the promotion and preservation of the public health." (Emphasis added)

Further, at Section 12011(c) of the Local Health Administration Law, the powers and duties of the Board of Health are outlined. Section 12011(c) states:

> "The Board of health shall exercise the rule-making power conferred upon the county department of health by the formulation of rules and regulations for the prevention of disease, for the prevention and removal of conditions which constitute a menace to health, and the public health generally. Rules and regulations formulated by the board of health shall be submitted to the county commissioners or, in the case of a joint-county department of health, to the joint-county health commission, for approval or

rejection. With thirty (30) days after the receipt of the rules and regulations, the county commissioners or the joint-county health commission, as the case may be, shall give written notice to the secretary of the board of their approval or rejection." (Emphasis added)

It is clear from these two sections of the Act that it was the intention of the Pennsylvania Legislature to give broad regulatory powers to county health departments, not only to remove unhealthful conditions, but further to prevent such conditions and to promote the health of the public generally.

Pursuant to the Local Health Administration Law, the Allegheny County Health Department adopted Allegheny County Health Department Rules and Regulations

Article VI, "Houses and Rooming Houses", effective January 1, 1957.

Sections 621 and 626 of Allegheny County Health Department Rules and Regulations Article VI assess responsibility for repair of certain aspects of residential housing to the owner occupant or one who "lets to another for occupancy" a residential dwelling unit.

Respondent does not dispute the fact that a landlord may enter into a valid and enforceable agreement with his tenant to make repairs of a leased premise. Such agreements, however, do not absolve the landlord from potential summary criminal prosecution under the applicable County regulation.

Respondent, who is not a party to the lease or its provisions, cannot be held to the provisions of said lease as to enforcement against the landlord.

An owner of land and structures thereon may not contract away (as to the County) his duty to maintain his land and buildings in conformity with any valid, existing laws, rules and/or regulations pertaining to property and property owners. Thus, the Petitioner (as to the municipality) retained the responsibility for operating his improved land in accord with the Rules and Regulations of Allegheny County Health Department.

In fact, Judge Barbieri, of the Pennsylvania Commonwealth Court, in a previous appeal by Petitioner for the same property, interpreting the same lease with the same issue wrote:

> "Although the tenant may indeed be responsible under the lease for payment to the landlord for repairs which are necessary to abate the violations, the landlord

is responsible to the Department for ensuring that the violations are actually abated. Appellant may not contract such responsibility away to a third party. His only remedy is to enforce the terms of the lease agreement by requiring the tenant to pay for necessary repairs and alterations."

Slomnicki v. Allegheny County Health Department 538 A.2d 122 (Pa. Commonwealth 1988).

C. SEPARATE ACTIONS BY ALLEGHENY COUNTY HEALTH DEPARTMENT CAN BE BROUGHT FOR SIMILAR VIOLATIONS ON DIFFERENT DAYS.

The issue of double jeopardy was not raised by the Petitioner at the Common Pleas Court of Allegheny County either by brief motion or argument. It was not until

Petitioner reached the Pennsylvania Appellate Court (Commonwealth Court of Pennsylvania) that he attempted to raise this issue. Accordingly, the Commonwealth Court of Pennsylvania did not even consider the question of double jeopardy. Respondent, therefore, contends that the Supreme Court of the United States lacks jurisdiction to hear this issue for it is not properly before this Court.

Under Allegheny County Health Department Rules and Regulations, Article VI, "Houses and Rooming Houses", the existence of a condition is only a violation if the premise in question is occupied. It is logical, therefore, that the continued occupancy (emphasis added) constitutes a fresh violation.

Additionally, Article VI, "Houses and Rooming Houses", a Rule and Regulation of Allegheny County Health Department, duly

promulgated under the Local Health Administration Law, Act 315, August 24, 1951, P.L. 1304 Sec. et seq., as amended, 16 P.S. 12001 et seq., specifies at Section 664(c):

> "Separate Offenses - For the purpose of this section, violations on separate days shall be considered separate offenses. Each violation of any separate subsection or section of this article shall constitute a separate offense."

Further, the Local Health Administration Law itself, at Section 12027(c) specifies that any person who violates a rule and regulation of a county health department on separate days shall be considered separate offenses.

For this reason it is clear that a previous conviction is not a bar to a

conviction under identical or similar violations on different dates.

D. RULE 1100(a)(2) AND RULE 1123 OF THE PENNSYLVANIA RULE OF CRIMINAL PROCEDURE DO NOT APPLY TO PETITIONER'S CASE.

No where in the Lower Court proceedings did Petitioner raise any issues pertaining to the Pennsylvania Rules of Criminal Procedure by brief, motion or argument. This issue is being raised by Petitioner before this Court for the very first time. For this reason alone, notwithstanding the fact that the constitutionality of Rules 1100(a)(2) and 1123 have not been raised, the Supreme Court of the United States should not consider this issue for it is not properly before this Honorable Court.

According to the Pennsylvania Judiciary and Judicial Procedure Act of 1976,

27, 1978 (42 PA C.S.A. Sec. 1722), the Supreme Court of Pennsylvania adopted the Pennsylvania Rules of Criminal Procedure, adopted January 31, 1970, effective May 1, 1970; amended effective April 26, 1972; amended September 18, 1973, effective January 1, 1974; June 28, 1974, effective July 1, 1974; January 28, 1983, effective July 1, 1983; July 12, 1985, effective July 1, 1986.

Petitioner has severely misconceived precisely when Rule 1100(a)(2) and Rule 1123 of the Pennsylvania Rules of Criminal Procedure are applicable.

I.

Rule 1100(a)(2) of the Pennsylvania Rules of Criminal Procedure in pertinent part states:

> "Trial in a court case in which a written complaint is filed against

> the defendant, where the defendant is incarcerated, shall commence no later than one hundred eighty (180) days from the date on which the complaint is filed."

Petitioner was not incarcerated at any time from the day he was cited. As set forth in the facts, Petitioner's initial trial was concluded fifty-six (56) days from the time Respondent filed the original complaint. From Petitioner's interpretation of Rule 1100(a)(2) of the Pennsylvania Rules of Criminal Procedure, it is apparent that he is attempting to implicate the time limitation of the rule to an appeal which was effectuated by Petitioner.

The rule does not apply to Petitioner since his initial trial was concluded fifty-six (56) days from the time Respondent filed the original complaint.

Rule 1100(a)(2) of the Pennsylvania Rules of Criminal Procedure does not guarantee that an appeal must be heard before a court within one hundred eighty (180) days.

Petitioner quotes from Commonwealth v. Kugas, 435 A.2d 1293, 1294, 291 Pa. Super. 408 (1981), on page fifteen (15) of his brief as follows:

> "Thus we conclude that summary offenses charged in the same complaint as misdemeanors are part of a court case for purposes of Rule 1100."

Without going into detail, it is obvious that Kugas is not applicable to the present case. There was no combination of a summary offense and a misdemeanor offense charged in the complaint filed by Respondent. On March 5, 1986, Respondent only charged Petitioner with a summary offense in the said complaint. Hence, the

Kugas case is irrelevant.

II.

As mentioned, Supra, Rule 1123 (Post-Verdict Motions) of Pennsylvania Rules of Criminal Procedure is being raised to this Court for the very first time and is, therefore, not properly before it.

Rule 1123(c) states:

> "Upon the finding of guilty, the trial judge shall advise the defendant on the record:
>
> (1) of the right to file post-verdict motions and of the right to the assistance of counsel in the filing of such motions and an appeal of any issues raised therein;
>
> (2) of the time within which he must do so as set forth in paragraph (a); and

(3) that only the grounds contained in such motions may be raised on appeal."

Rule 1123(a) states:

"(a) Within ten (10) days after a finding of guilt, the defendant shall have the right to file written motions for a new trial and in arrest of judgment. Only those grounds may be considered which were raised in pre-trial proceedings or at trial, unless the trial judge, upon cause shown, allows otherwise. Argument, a hearing, or both shall be scheduled and heard promptly after such motions are filed, and only those issues raised and the grounds relied upon in the motions that are stated specifically and with particularity may be argued

or heard. If the grounds asserted do not require a transcript, neither the filing, argument, nor hearing of post-verdict motions shall be delayed for lack of a transcript of the notes of testimony."

The Pennsylvania Rules of Criminal Procedure have a chapter designated for summary proceedings. Rule 90 of the Pennsylvania Rules of Criminal Procedure, (Defects In Form, Content, or Procedure-Summary Cases), in pertinent part states:

"A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of this chapter, unless the defendant raises the defect

before the conclusion of the summary trial and the defect is prejudicial to the rights of the defendant."

Thus, according to Rule 90 of the Pennsylvania Rules of Criminal Procedure, since Petitioner did not raise the issue of Rule 1123 of the Pennsylvania Rules of Criminal Procedure in the prior Court proceedings, he is barred from raising it at this level.

Respondent would also like to bring to the attention of this Court the original Summary Complaint filed against Petitioner with the Housing Court Magistrate, dated March 5, 1986. The bottom right corner of the complaint states, in bold face:

"You have the right to be represented by a lawyer."

There was never any dispute as to whether or not the complaint described

above was properly served according to the Pennsylvania Rules of Criminal Procedure as indicated by the Record. Therefore, upon being served, Petitioner was given notice of his right to be represented by counsel. Such notice occurred prior to the commencement of any Court proceedings. The notice Petitioner received, with regard to counsel, was beyond the minimal requirements of Rule 1123 of the Pennsylvania Rules of Criminal Procedure. Hence, the black letter of Rule 1123 of the Pennsylvania Rules of Criminal Procedure has not been violated.

Respondent finds it difficult to believe that an individual who has, since 1986, filed four (4) separate appeals to the Allegheny County Common Pleas Court, three (3) appeals to the Commonwealth Court of Pennsylvania, a Writ of Allowance to the Pennsylvania Supreme Court, a Request for

Reconsideration to the Pennsylvania Supreme Court, and a Writ of Certiorari to the Supreme Court of the United States without the assistance of legal counsel, was not aware of his right to be represented by counsel. By electing not to employ counsel, Petitioner has willfully waived his rights under Rule 1123 of the Pennsylvania Rules of Criminal Procedure.

Notwithstanding the fact that Petitioner has not raised the constitutionality of Rule 1123 of the Pennsylvania Rules of Criminal Procedure, Respondent respectfully contends that the Supreme Court of the United States should not hear this issue.

CONCLUSION

The Allegheny County Health Department has as its general purpose to preserve and protect the public health. Pursuant to these objectives they adopted certain rules and regulations designed to preserve and promote the public health within Allegheny County.

The regulations of minimum housing standards is a logical and reasonable exercise of its powers and duties.

The facts here are in no way in dispute. The only issue is, whether the Petitioner is guilty of failing to bring his rental property up to certain minimum standards once he had been notified and given reasonable opportunity to do so. The Courts below found he did not.

WHEREFORE, the Allegheny County Health Department respectfully requests this Honorable Court to deny Petitioner's

request for a Writ of Certiorari for lack of jurisdiction or, in the alternative, affirm the decision of the Commonwealth Court of Pennsylvania and find Joseph Slomnicki guilty of the violations on the days cited, and impose the fine of nineteen hundred dollars ($1900.00) plus damages for his delays and double costs pursuant to 28 U.S.C. Section 1912, Act of June 25, 1948, Chapter 646, Section 1, 62 Stat. 954.

Respectfully submitted,

George Janocsko

George Janocsko, Esq.
Counsel of Record

APPENDIX A

28 U.S.C., Section 1912, Damages and Costs on Affirmance:

> "Where a judgment is affirmed by the Supreme Court or a Court of Appeals, the Court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs."

APPENDIX B

28 U.S.C., Section 1257(a):

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, Treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the Treaties or statutues of, or any commission held or authority exercised under, the United States."

I, George Janocsko, do swear that on this 18th day of July, 1990, I have served three (3) copies of this Brief in Opposition on each party to this proceeding. Such service was done by sending said documents by First Class Mail, postage prepaid, with the United States Post Office, pursuant to 28 U.S.C. Section 1746. The name and address of the party served is:

Joseph Slomnicki
5877 Darlington Road
Pittsburgh, PA 15217

I, George Janocsko, also swear that Petitioner personally served the Writ of Certiorari Brief to my office in care of Robert Borgoyn on June 20, 1990, not May 29, 1990, as Petitioner's sworn statement indicates.

George Janocsko
George Janocsko, Esq.
Counsel of Record

Sworn to before me this 18th day of July, 1990
Patricia E. Sullivan

Notarial Seal
Patricia E. Sullivan, Notary Public
Pittsburgh, Allegheny County